

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2418**

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**Introduced by Assembly Member Cook**

February 19, 2010

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An act to amend Section 224.1 of the Welfare and Institutions Code, relating to Indian children.

LEGISLATIVE COUNSEL'S DIGEST

AB 2418, as amended, Cook. Indian children.

The federal Indian Child Welfare Act governs the proceedings for determining the placement of an Indian child when that child is removed from the custody of his or her parent or guardian. Existing provisions of state law govern child custody proceedings, adoption proceedings, dependency proceedings, including termination of parental rights, the voluntary relinquishment of a child by a parent, and guardianship proceedings. Existing law recognizes that the Indian Child Welfare Act applies if the subject of these proceedings is or may be an Indian child and specifies conforming procedures in these cases with regard to the right to notice and intervention accorded the child's tribe and the standard of proof applied in evaluating the evidence submitted, among other things. Existing law provides various definitions for these purposes.

This bill would ~~make a technical, nonsubstantive change to that provision~~ *revise the definition of "Indian child" for purposes of Indian child custody proceedings to include an unmarried person who is under 21 years of age and who is either a member of an Indian tribe or eligible for membership in an Indian tribe, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 224.1 of the Welfare and Institutions  
2 Code is amended to read:  
3 224.1. (a) As used in this division, unless the context requires  
4 otherwise, the terms “Indian,” ~~“Indian child,”~~ “Indian child’s tribe,”  
5 “Indian custodian,” “Indian tribe,” “reservation,” and “tribal court”  
6 shall be defined as provided in Section 1903 of the Indian Child  
7 Welfare Act (25 U.S.C. Sec. 1901 et seq.).  
8 (b) *As used in connection with an Indian child custody*  
9 *proceeding, the term “Indian child” means an unmarried person*  
10 *who is under 21 years of age and who is either of the following:*  
11 *(1) A member of an Indian tribe.*  
12 *(2) Eligible for membership in an Indian tribe and is the*  
13 *biological child of a member of an Indian tribe.*  
14 ~~(b)~~  
15 (c) As used in connection with an Indian child custody  
16 proceeding, the terms “extended family member” and “parent”  
17 shall be defined as provided in Section 1903 of the Indian Child  
18 Welfare Act.  
19 ~~(c)~~  
20 (d) “Indian child custody proceeding” means a “child custody  
21 proceeding” within the meaning of Section 1903 of the Indian  
22 Child Welfare Act, including a proceeding for temporary or  
23 long-term foster care or guardianship placement, termination of  
24 parental rights, preadoptive placement after termination of parental  
25 rights, or adoptive placement. “Indian child custody proceeding”  
26 does not include a voluntary foster care or guardianship placement  
27 if the parent or Indian custodian retains the right to have the child  
28 returned upon demand.  
29 ~~(d)~~  
30 (e) If an Indian child is a member of more than one tribe or is  
31 eligible for membership in more than one tribe, the court shall  
32 make a determination, in writing together with the reasons for it,  
33 as to which tribe is the Indian child’s tribe for purposes of the  
34 Indian child custody proceeding. The court shall make that  
35 determination as follows:

1 (1) If the Indian child is or becomes a member of only one tribe,  
2 that tribe shall be designated as the Indian child's tribe, even though  
3 the child is eligible for membership in another tribe.

4 (2) If an Indian child is or becomes a member of more than one  
5 tribe, or is not a member of any tribe but is eligible for membership  
6 in more than one tribe, the tribe with which the child has the more  
7 significant contacts shall be designated as the Indian child's tribe.  
8 In determining which tribe the child has the more significant  
9 contacts with, the court shall consider, among other things, the  
10 following factors:

11 (A) The length of residence on or near the reservation of each  
12 tribe and frequency of contact with each tribe.

13 (B) The child's participation in activities of each tribe.

14 (C) The child's fluency in the language of each tribe.

15 (D) Whether there has been a previous adjudication with respect  
16 to the child by a court of one of the tribes.

17 (E) Residence on or near one of the tribes' reservations by the  
18 child parents, Indian custodian or extended family members.

19 (F) Tribal membership of custodial parent or Indian custodian.

20 (G) Interest asserted by each tribe in response to the notice  
21 specified in Section 224.2.

22 (H) The child's self-identification.

23 (3) If an Indian child becomes a member of a tribe other than  
24 the one designated by the court as the Indian child's tribe under  
25 paragraph (2), actions taken based on the court's determination  
26 prior to the child's becoming a tribal member continue to be valid.